THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.5396 of 2006

Date:16.03.2007

Between:

Chabbinath

PETITIONER

AND

The Government of A.P. and others.

---------RESPONDENTS

ORDER:

The petitioner is a Class-I Contractor and had executed several works entrusted to him. One such work was construction of a bridge in Mahaboobnagar District in the year 1983. Disputes arose in relation to the payment of bills. The matter was referred to Arbitrator. An award was passed in favour of the petitioner and the same was made rule of the Court by the V Additional Judge, City Civil Court, Hyderabad. The Government filed C.M.A.No.638 of 1994 before this Court. The decree passed by the trial Court was confirmed with slight modification through the order, dated 31.07.2006. The modified decree has become final. The petitioner filed an E.P. for execution of the decree. The fifth respondent had addressed a letter, dated 24.02.2007, to the fourth respondent to take necessary steps for recovery of a sum of Rs.2,60,000/- from the petitioner on the basis of a decree passed in O.S.No.39 of 1999 on the file of the Senior Civil Judge, Nizamabad. The petitioner challenges the action of the respondents in proposing to recover the amount on the basis of an ex parte decree, that too, from the amount, which is to be paid under an award, affirmed by

this Court.

Heard the learned counsel for the petitioner and the learned Government Pleader for Roads and Buildings.

As of now, there exists a decree in favour of the petitioner, which arose out of arbitration proceedings and a decree against him in a suit filed by the Department in the Court of the Senior Civil Judge, Nizamabad. The fifth respondent addressed a letter, dated 24.02.2007, to the fourth respondent to recover certain amount. This is obviously because he became aware of the entitlement of the petitioner to be paid the amount under the award passed in an Arbitration. In the usual course, the fifth respondent ought to have taken steps to recover the amount from his own division or from the Officer of the Engineer-in-Chief, the second respondent. Further, once the amount is covered by a decree, the only way to recover is by filing an E.P. The impugned letter does not disclose that any E.P. was filed in the Court of the Senior Civil Judge, Nizamabad nor any precept was obtained. On account of the letter addressed by the fifth respondent to the fourth respondent, the decree that became final in favour of the petitioner cannot be defeated.

For the foregoing reasons, the writ petition is disposed of, directing that the fourth respondent shall not withhold any amount payable to the petitioner on the basis of the award passed in his favour, which was affirmed by this Court in C.M.A.No.683 of 1994. So far as the fifth respondent is concerned, it shall be open to him to file an E.P. or obtain precept in accordance with law to recover the amount covered by the decree in O.S.No.39 of 1999 on the file of the Senior Civil Judge, Nizamabad, if it is otherwise executable. There shall be no order as to costs.

16.03.2007

Note: Issue C.C. in three days.
(B/o)
kdl